TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 496

ESTELLE T. GRISWOLD, ET AL., APPELLANTS,

v.

CONNECTICUT.

APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT

FILED SEPTEMBER 14, 1964
PROBABLE JURISDICTION NOTED DECEMBER 7, 1964

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
TO BE HELD AT NEW HAVEN, CONNECTICUT
ON NOVEMBER 24, 1961

No. CR 6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

INFORMATION WITH WARRANT

Julius Maretz, prosecuting attorney of said court, on his oath of office, complains, and information makes:

That on or about November 6th, 1961 at New Haven, Connecticut, Estelle T. Griswold of New Haven, Connecticut in violation of the provisions of Sections 53-32 and 54-196 of the General Statutes of the State of Connecticut, did assist, abet, counsel, cause and command certain married women to use a drug, medicinal article and instrument, for the purpose of preventing conception.

And the prosecuting attorney further complains and information makes, that thereafter said married women in consequence of said conduct of said Estelle T. Griswold, did in fact use said drugs, medicinal articles, and instruments for the purpose of preventing conception.

Said prosecuting attorney prays process against said accused, and that said accused may be arrested and held to answer to this information, and be thereon dealt with according to law.

Dated November 10, 1961, at New Haven, Connecticut.

Julius Maretz, Prosecuting Attorney, Circuit Court of Connecticut, Sixth Circuit.

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
TO BE HELD AT NEW HAVEN, CONNECTICUT
ON NOVEMBER 24, 1961

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

DEMURRER

The defendant demurs to the information filed herein for the reason that Sections 53-32 and 54-196 of the General Statutes of Connecticut, as they would here be applied to the defendant, are unconstitutional for the reasons that:

[fol. 2] 1. They would deny her her rights to liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

2. They would deny her her rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States, and Sections 5 and 6 of Article First of the Constitution of the State of Connecticut.

Defendant, By Catherine G. Roraback, Her Attorney.

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

December 20, 1961

No. CR 6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

MEMORANDUM ON DEMURRER TO INFORMATION

The defendant is charged, in an information with the crime of assisting and abetting the use of a drug, medicinal article and instrument for the purpose of preventing conception.

The law of this State prohibits the use of contraceptive materials. General Statutes, Sec. 53-32.

In Connecticut there are no substantive statutory provisions dealing with the sale or distribution of contraceptive devices, nor the giving of information concerning their use.

The alleged activities of the defendant are deemed to be involved in law solely because of the general accessory statute of this State. General Statutes, Sec. 54-196.

The defendant in her demurrer claims that these statutes as applied to her are unconstitutional because:

1. They would deny her her rights to liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and

2. They would deny her her rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States, and Sections 5, and 6 of Article First of the Constitution of the State of Connecticut.

[fol. 3] The constitutionality of these same statutes, in identical form, were under attack by demurrer in *State* v. *Nelson,* (and companion cases) 126 Conn. 412. In those cases the grounds of demurrer were a general claim that the substantive statute, that is now Sec. 53-32, was an interference with the individual liberty of citizens and a deprivation thereof without due process of law in violation of the Federal and State Constitutions.

The Supreme Court of Errors in *State* v. *Nelson,* (and companion cases), 126 Conn. 412, found the substantive statute to be constitutional and a valid exercise of the police power of the state to regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety and the public health, as well as to promote the common good.

Now again in the instant case, the claim is made that Sec. 53-32 is unconstitutional and violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Since *State* v. *Nelson,* 126 Conn. 412 (and companion cases) our Supreme Court of Errors has had before it other cases involving these same statutes in which their constitutionality was sustained.

Buxton v. *Ullman,* 147 Conn. 48 (and three companion cases)

Tilston v. *Ullman,* 129 Conn. 84.

In those cases, the court stated that the statutes under consideration were a proper exercise of the police power of the state and did not invade rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In *Trubeck* v. *Ullman,* 147 Conn. 633, the court reaffirmed its holding of the constitutionality of these statutes against the challenge of the plaintiffs that the statutes deprived them of rights guaranteed by the Fourteenth Amendment to the Federal Constitution

In the face of these decisions, this Court is confronted with the rule of stare decisis commonly called the doctrine of precedents.

This rule is peculiarly applicable to the trial court.

Where a principle of law has become settled by a series of decisions, it is binding on the courts and should be fol-
[fol. 4] lowed in similar cases, or as otherwise expressed, the principle so settled forms a precedent for the guidance of the courts in similar cases.

This doctrine is a part of our judicial system, and it rests upon the principle that the law by which men are governed should be fixed, definite and known, and that, when it is declared by a court of competent jurisdiction authorized to construe it, in the absence of palpable mistake or error, is itself evidence of the law until it is changed by competent authority.

In *State* v. *Muolo,* 119 Conn. 323, our Supreme Court of Errors held that it is incumbent upon any court, in the consideration of an attack upon the constitutionality of a legislative act, to approach the question with great caution, examine it with infinite care, make every presumption and intendment in its favor, and sustain the act unless its invalidity is clear.

As to the second ground of demurrer, it may be said that the First Amendment to the Federal Constitution is a limitation on the power of Congress only, but that the Fourteenth Amendment to the Federal Constitution safeguards liberty of speech and free expression from state aggression.

Freedom of speech is embraced within the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment.

The right of free speech and free expression is guaranteed under Sections 5 and 6 of the Constitution of this State.

This right of free speech under both the Federal and State Constitutions is not an absolute right which carries with it into activity and professions total immunity from regulation in the performance of acts to which speech is a mere incident or means of accomplishment.

The state may enact reasonable regulations in order to promote the general welfare as well as to promote and to advance public health and public morals.

The constitutionality of these statutes has been repeatedly sustained and found to be valid legislation.

Legislation may or may not be adapted to accomplish a valid and beneficial purpose and its utility or futility is for the consideration of the legislature and not the court.

The substantive statute, Sec. 53-32 as enacted by the legislature is one of complete suppression and absolute prohibition. It admits of no exception.

[fol. 5] No person has the right to counsel or advise another to perform any act which is in violation of a judicially determined valid enactment and claim immunity from prosecution under the accessory statute, Sec. 54-196 on the ground that he has a right so to do under the constitutional guaranty of freedom of speech. To do so, she exposes herself to prosecution as a principal under the provision of the accessory statute, Sec. 54-196.

A person may be prosecuted and punished as a principal under the accessory statute, although the actual perpetrator of the crime involved has not been convicted. The relevant inquiry in such cases is whether the crime was committed and whether the accessory being prosecuted as a principal under the statute did in fact abet its commission. *State* v. *Wakefield*, 88 Conn. 164.

Every citizen has an equal right to use his mental endowments as well as his property, in any harmless occupation or manner; but he has no right to use them so as to injure his fellow citizens or to endanger the vital interests of society. Immunity in the mischievous use is as inconsistent with civil liberty as prohibition of the harmless use. *State* v. *McKee*, 73 Conn. 18.

For the reasons stated the demurrer is overruled on both grounds.

Lacey, J.

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
TO BE HELD AT NEW HAVEN, CONNECTICUT
ON NOVEMBER 24, 1961

No. CR 6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

INFORMATION WITH WARRANT

Julius Maretz, prosecuting attorney of said court, on his oath of office, complains, and information makes:

That on or about November 6th, 1961 at New Haven, Connecticut, C. Lee Buxton, a duly qualified and licensed physician, of the Town of Woodbridge, State of Connecticut, in violation of the provisions of Sections 53-32 and 54-196 of the General Statutes of the State of Connecticut, did assist, abet, counsel, cause and command certain married women to use a drug, medicinal article and instrument, for the purpose of preventing conception.

And the prosecuting attorney further complains and information makes, that thereafter said married women in [fol. 6] consequence of said conduct of said C. Lee Buxton, did in fact use said drugs, medicinal articles, and instruments for the purpose of preventing conception.

Said prosecuting attorney prays process against said accused, and that said accused may be arrested and held to answer to this information, and be thereon dealt with according to law.

Dated November 10, 1961, at New Haven, Connecticut.

Julius Maretz, Prosecuting Attorney, Circuit Court of Connecticut, Sixth Circuit.

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
TO BE HELD AT NEW HAVEN, CONNECTICUT
ON NOVEMBER 24, 1961

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

DEMURRER

The defendant demurs to the information filed herein for the reason that Sections 53-32 and 54-196 of the General Statutes of Connecticut, as they would here be applied to the defendant, are unconstitutional for the reasons that:

1. They would deny him his rights to liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

2. They would deny him his rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States, and Sections 5 and 6 of Article First of the Constitution of the State of Connecticut.

Defendant, By Catherine G. Roraback, His Attorney.

Certificate of Service (omitted in printing).

[fol. 7]

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

December 20, 1961

No. CR 6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

MEMORANDUM ON DEMURRER TO INFORMATION

The defendant, a duly qualified and licensed physician, is charged in an information with the crime of assisting and abetting the use of a drug, medicinal article and instrument for the purpose of preventing conception.

The law of this State prohibits the use of contraceptive materials. General Statutes, Sec. 53-32.

In Connecticut there are no substantive statutory provisions dealing with the sale or distribution of contraceptive devices, nor the giving of information concerning their use.

The alleged activities of the defendant are deemed to be involved in law solely because of the general accessory statute of this State. General Statutes, Sec. 54-196.

The defendant in his demurrer claims that these statutes as applied to him are unconstitutional because:

1. They would deny him his rights to liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States; and

2. They would deny him his rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States, and Sections 5 and 6 of Article First of the Constitution of the State of Connecticut.

The constitutionality of these same statutes, in identical form, were under attack by demurrer in *State* v. *Nelson,* (and companion cases) 126 Conn. 412. In those cases the grounds of demurrer were a general claim that the substantive statute, that is now Sec. 53-32, was an interference with the individual liberty of citizens and a deprivation thereof without due process of law in violation of the Federal and State Constitutions.

The Supreme Court of Errors in *State* v. *Nelson,* (and companion cases), 126 Conn. 412, found the substantive [fol. 8] statute to be constitutional and a valid exercise of the police power of the state to regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety and the public health, as well as to promote the common good.

Now again in the instant case, the claim is made that Sec. 53-32 is unconstitutional and violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Since *State* v. *Nelson,* 126 Conn. 412 (and companion cases) our Supreme Court of Errors had had before it other cases involving these same statutes in which their constitutionality was sustained.

Buxton v. *Ullman,* 147 Conn. 48 (and three companion cases)

Tileston v. *Ullman,* 129 Conn. 84.

In those cases, the court stated that the statutes under consideration were a proper exercise of the police power of the state and did not invade rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

In *Trubeck* v. *Ullman,* 147 Conn. 633, the court reaffirmed its holding of the constitutionality of these statutes against the challenge of the plaintiffs that the statutes deprived them of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

In the face of these decisions, this Court is confronted with the rule of stare decisis commonly called the doctrine of precedents.

This rule is peculiarly applicable to the trial court.

Where a principle of law has become settled by a series of decisions, it is binding on the courts and should be followed in similar cases, or as otherwise expressed, the principle so settled forms a precedent for the guidance of the courts in similar cases.

This doctrine is a part of our judicial system, and it rests upon the principle that the law by which men are governed should be fixed, definite and known, and that, when it is declared by a court of competent jurisdiction authorized to construe it, in the absence of palpable mistake or error, is itself evidence of the law until it is changed by competent authority.

[fol. 9] In *State* v. *Muolo,* 119 Conn. 323, our Supreme Court of Errors held that it is incumbent upon any court, in the consideration of an attack upon the constitutionality of a legislative act, to approach the question with great caution, examine it with infinite care, make every presumption and intendment in its favor, and sustain the act unless its invalidity is clear.

As to the second ground of demurrer, it may be said that the First Amendment to the Federal Constitution is a limitation on the power of Congress only, but that the Fourteenth Amendment to the Federal Constitution safeguards liberty of speech and free expression from state aggression.

Freedom of speech is embraced within the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment.

The right of free speech and free expression is guaranteed under Sections 5 and 6 of the Constitution of this State.

This right of free speech under both the Federal and State Constitutions is not an absolute right which carries with it into activity and professions total immunity from regulation in the performance of acts to which speech is a mere incident or means of accomplishment.

The state may enact reasonable regulations in order to promote the general welfare as well as to promote and to advance public health and public morals.

The constitutionality of these statutes has been repeatedly sustained and found to be valid legislation.

Legislation may or may not be adapted to accomplish a valid and beneficial purpose and its utility or futility is for the consideration of the legislature and not the court.

The substantive statute, Sec. 53-32 as enacted by the legislature is one of complete suppression and absolute prohibition. It admits of no exception.

No person has the right to counsel or advise another to perform any act which is in violation of a judicially determined valid enactment and claim immunity from prosecution under the accessory statute, Sec. 54-196 on the ground that he has a right so to do under the constitutional guaranty of freedom of speech. To do so, he exposes himself to prosecution as a principal under the provision of the accessory statute, Sec. 54-196.

[fol. 10] A person may be prosecuted and punished as a principal under the accessory statute, although the actual perpetrator of the crime involved has not been convicted. The relevant inquiry in such cases is whether the crime was committed and whether the accessory being prosecuted as a principal under the statute did in fact abet its commission. *State* v. *Wakefield*, 88 Conn. 164.

Every citizen has an equal right to use his mental endowments as well as his property, in any harmless occupation or manner, but he has no right to use them so as to injure his fellow citizens or to endanger the vital interests of society. Immunity in the mischievous use is as inconsistent with civil liberty as prohibition of the harmless use. *State* v. *McKee*, 73 Conn. 18.

For the reasons stated the demurrer is overruled on both grounds.

Lacey, J.

judgment file—criminal
circuit court

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
HELD AT NEW HAVEN, CONNECTICUT
ON JANUARY 2, 1962

No. CR 6-5653

No. CR 6-5654

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

C. LEE BUXTON

Present, Hon. J. Robert Lacey, Judge

JUDGMENT

Upon the complaint of Julius Maretz, Prosecuting Attorney for the circuit court, 6th circuit, charging the accused, Estelle T. Griswold and C. Lee Buxton with the crime of Sections 53-32 and 54-196 of the General Statutes of the State of Connecticut, in that they did assist, abet, counsel, cause and command certain married women to use a drug, medical article and instrument for the purpose of preventing conception.

Said accused were presented before said court on December 8, 1961. The accused, being then and there called upon to answer to said complaint for plea, said "Not Guilty", whereupon the court advised the accused of the accused's right to a trial by jury. The accused then elected to be tried by the court.

[fol. 11] After a full hearing, the court found the accused "Guilty".

It is therefore adjudged by the court that the accused is guilty in manner and form as charged in said complaint.

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clegpub

The court sentenced the accused to pay a fine of $100.00 each.

Date of trial or hearing January 2, 1962.

Date of sentence January 2, 1962.

Warrant issued Pending Appeal.

Dated at New Haven, Connecticut, January 20, 1962.

Attest:

Paul M. Foti, Clerk.

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IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

January 5, 1962

No. CR 6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR 6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

MOTION FOR AN ORDER TO COMBINE APPEALS

The defendants hereby move for an order that their appeals from the judgments in the above matters be com-

bined and submit the annexed stipulation in support of this motion.

The Defendants, Estelle T. Griswold and C. Lee Buxton, By Catherine G. Roraback, Their Attorney.

[fol. 12] ORDER

The foregoing motion having been presented, it is hereby Ordered that the appeals from the judgment entered in the above entitled actions be combined.

At New Haven this 10th day of January, 1962.

J. Robert Lacey, Judge of the Circuit Court of Connecticut.

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

January 5, 1962

No. CR 6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR 6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

STIPULATION TO JOIN APPEALS

The State of Connecticut, acting herein by Julius Maretz, Prosecuting Attorney for the Circuit Court of Connecticut for the sixth Circuit, and the defendants in the above en-

titled actions, Estelle T. Griswold and C. Lee Buxton, hereby stipulate that the appeals from the judgments rendered therein be combined.

At New Haven this 5th day of January, 1962.

The State of Connecticut, By Julius Maretz, Prosecuting Attorney for Circuit Court of Connecticut for the Sixth Circuit.

The Defendant, Estelle T. Griswold, By Catherine G. Roraback, Her Attorney.

The Defendant, C. Lee Buxton, By Catherine G. Roraback, His Attorney.

[fol. 13]

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

June 12, 1962

No. CR6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

FINDING

First: The following facts are found:

1. The Planned Parenthood Center of New Haven, hereinafter referred to as the "Center" was opened on Novem-

ber 1, 1961, to provide information, instruction and medical advice to married persons as to the means of preventing conception and to educate married persons generally as to such means and methods.

2. The Center was located in eight rooms on the second floor of the building at 79 Trumbull Street in New Haven, Connecticut, which consisted of a reception room, a waiting room, an interview room, a consultation room, an examining room, two dressing rooms and a laboratory.

3. The Center made such information, instruction, education and medical advice available to married persons who sought it at said location from November 1, 1961 to November 10, 1961, when the Center was closed.

4. The Planned Parenthood League of Connecticut occupied and maintained an office consisting of four rooms in the front of the second floor of the same building at 79 Trumbull Street.

5. The defendant Estelle T. Griswold, is the Executive Director of said League and as such was salaried and had her office in the League quarters in the front of the building on the second floor.

6. The offices of the Center were located in the rear of the second floor and the defendant Estelle T. Griswold was the Acting Director of the Center and in charge of the administration and the educational program thereof.

7. The defendant C. Lee Buxton is a physician, licensed to practice in the State of Connecticut, who is a specialist in the field of obstetrics and gynecology, the director of [fol. 14] the University Obstetrical and Gynecological Service at the Grace-New Haven Community Hospital in New Haven, Connecticut, the chairman of the Department of Obstetrics and Gynecology and Professor of Obstetrics and Gynecology at the Yale University Medical School in New Haven, Connecticut, an author in the field of his specialty and a leader in its professional organizations.

8. The defendant C. Lee Buxton was the medical director of the Center, both before its opening and while it was in operation from November 1st to November 10th, 1961.

9. As medical director and after consultation with the Medical Advisory Committee of the Center, which Committee was appointed by him, the defendant C. Lee Buxton made all medical decisions as to the facilities of the Center, the arrangement of its rooms, the equipment purchased for it, the medical forms, history forms concerning a patient and other forms used there, the procedures followed in processing the patients at the Center, the types of contraceptive advice available and provided at the Center, the types of contraceptive articles and materials available at the Center for distribution to patients, the methods of providing the same, and the selection, assignment and supervision of the medical doctors to staff the Center.

10. The defendant C. Lee Buxton, in addition, on several occasions, as a physician, examined and gave contraceptive advice to patients at the Center while it was in operation from November 1st to November 10th, 1961.

11. The defendant Estelle T. Griswold was Acting Director of the Center both before its opening and while it was in operation from November 1st to November 10th, 1961.

12. The general procedure for the processing of a patient of the Center was as follows:

a. Individuals called the Center by telephone or came in making inquiry, and were briefly questioned to ascertain whether they were in fact seeking contraceptive advice and if so they were given an appointment for a stated day and hour.

b. The patient, having come to the Center at the appointed time, was first interviewed by a staff member who took a case history of the patient on a standard form, (Defendants' Exhibit 1.) on which was entered the patient's name, her husband's name, ages of both, employment, family income, other economic information, the patient's preg- [fol. 15] nancy history, method of contraception previously used, the reason for desiring a change of method, and the pertinent medical history of the patient, her husband and children.

c. After this the patient attended a group orientation session with other patients at which all of the methods of contraception available at the Center were described, at the conclusion of which lecture the patient selected the method which she desired to use and as to which she wished to obtain further information and advice.

d. The methods of contraception available and described in this orientation session were the diaphragm and creams and vaginal jellies used with it; creams and jellies used alone; condom; vaginal foam; anti-ovulation pills; and the rhythm method.

e. Thereafter each patient individually saw a staff doctor who gave her a pelvic examination, reviewed the method of contraception selected by the patient in the light of this examination and of her medical history, and prescribed to the patient the method selected by her unless it was contra-indicated.

f. The doctor or nurse then gave the patient advice as to how to use the method of contraception prescribed, and advised her when to return to the Center for further consultation and advice.

g. The patient was then furnished with the contraceptive device, drug or contraceptive material prescribed by the doctor, made an appointment for a return visit, was charged a fee for the visit and left.

h. The fees charged to the patients were on a sliding scale ranging from a minimum of nothing to a maximum of $15.00 and the exact fee charged any one patient was determined on the basis of family income.

i. In between the various steps described in sub-paragraphs (a) through (g) above, there were periods of time during which the patient was not occupied, during which she sat in the waiting room where there were various pieces of literature, including certain exhibits in evidence, (State's Exhibits A through H and Defendants' Exhibits 2 through 9) available to her and which were examined and read by some of the patients of the Center.

13. The defendant Estelle T. Griswold on several occasions between November 1st and November 10th, 1961, while the Center was in operation, interviewed persons [fol. 16] prior to giving them appointments at the Center, as described in paragraph 12 (a) above; took case histories of patients, as described in paragraph 12 (b) above; conducted the group orientation session, describing the various methods of contraception available to patients as described in paragraph 12 (c) above; and on one occasion gave a patient a drug or medicinal article to prevent conception as described in paragraph 12 (g) above.

14. Joan B. Forsberg, a housewife and mother of three children living with her family in New Haven, Connecticut, upon learning of the existence of the Center, arranged for an appointment at the Center which was made for November 8, 1961 and on that date she went to the Center as a patient, seeking contraceptive advice, where she had her case history taken by a receptionist, attended an orientation session at which the defendant Estelle T. Griswold instructed her and other women as to the various methods of contraception available at the Center and told the patients they could choose the method they would individually prefer and be furnished with the necessary materials if the doctor approved, was given a pelvic examination by a staff doctor, was told that the anti-ovulation pill method of contraception which she had chosen was all right for her to use, was instructed by the doctor in its use; was thereafter given a supply of sixty anti-ovulation pills (State's Exhibit K.) by the person on duty at the registration desk at the direction of the defendant Estelle T. Griswold, and before leaving paid a fee to the Center and was told to return to the Center in two months.

15. Thereafter, after her visit to the Center, the said Joan B. Forsberg used approximately thirty of the pills (State's Exhibit K.) which had been furnished to her at the Center, and she so used said pills for the purpose of preventing conception and the use thereof did prevent conception.

16. On November 7, 1961, one Marie Wilson Tindall, a housewife and mother of several children, living with her

family in New Haven, Connecticut, after having made an appointment beforehand went to the Center with her husband in order to obtain information concerning contraception, and while she was at the Center she had her case history taken by the receptionist, attended an orientation session with other patients at which a lady in a white coat described the various types of contraceptives available to them at the Center, was given a pelvic examination by a staff doctor, told the doctor that she had chosen a diaphragm [fol. 17] as the type of contraceptive she wished to use, was fitted and given by the doctor a diaphragm and accompanying articles (State's Exhibits M through P), and thereafter was instructed by the lady in the white coat in how to use them, and before leaving paid a fee of $7.50 to the Center.

17. Thereafter, after her visit to the Center, the said Marie Wilson Tindall used the diaphragm and other articles furnished to her at the Center for the purpose of preventing conception.

18. On November 9, 1961, one Rosemary Anne Stevens, a young student married almost a year and living with her husband in New Haven, Connecticut, having made an appointment, went to the Center seeking to obtain contraceptive advice additional to that previously obtained by her in England, and while at the Center had her case history taken by the defendant Estelle T. Griswold, attended an orientation session at which the defendant Estelle T. Griswold described the methods of contraception available at the Center, was given a pelvic examination by the defendant C. Lee Buxton acting as a staff doctor on that day at the Center, was advised by the defendant C. Lee Buxton that the method of contraception (ortho-gynol contraceptive jelly) which she had chosen was satisfactory for her, was given instruction by him as to its use, and, before leaving the Center was given a tube of ortho-gynol vaginal jelly (State's Exhibit L.) by the defendant Estelle T. Griswold and paid a fee of $15.00 to the Center.

19. Thereafter, after her visit to the Center, the said Rosemary Anne Stevens used said ortho-gynol vaginal jelly (State's Exhibit L.) for the purpose of preventing conception.

20. Said Rosemary Anne Stevens decided to continue with the method of contraception she was already using and her decision so to do was based on advice received by her from the defendant Estelle T. Griswold and the defendant C. Lee Buxton.

21. The defendant C. Lee Buxton served as medical director of the Center and furnished, at the Center, medical advice to married women as to the use of drugs, contraceptive articles and materials and instruments for the purpose of preventing conception because as a medical doctor he felt he was justified in giving such advice and instruction in the light of expert medical opinion.

22. The medical experts upon whose opinions the defendant C. Lee Buxton relied are:

[fol. 18] Dr. Nicholson Eastman,

Prof. Emil Novak,

Dr. Robert Latau Dickinson,

Dr. Alan Guttmacher,

Dr. John Rock,

Dr. J. Richwood Williams (now deceased),

who are recognized authorities in the field of obstetrics and gynecology.

23. It is the opinion of doctors who practice and specialize in the practice of obstetrics and gynecology in the City of New Haven and in the State of Connecticut, that it is accepted medical practice for a physician to advise a woman suffering from a serious medical condition such as hypertensive cardiovascular heart disease that pregnancy would be detrimental to her health.

24. The defendant Estelle T. Griswold served as administrative director of the Center and participated in its operation because she felt that medically prescribed methods of contraception should be made available to the married women of Connecticut in order that they might protect

their health as mothers, the emotional and economic stability of their families and promote responsible parenthood.

Second: The following conclusions have been reached:

25. The use by Joan Forsberg, for the purpose of preventing conception, of the anti-ovulation pills furnished to her by the Planned Parenthood Center of New Haven was a violation of the provisions of Section 53-32 of the General Statutes of Connecticut.

26. The use by Marie Wilson Tindall, for the purpose of preventing conception and planning her family, of the diaphragm and other materials furnished to her by the Planned Parenthood Center of New Haven was also a violation of said Section 53-32.

27. The use by Rosemary Anne Stevens, for the purpose of preventing conception, of the orthogynol jelly furnished to her by the Planned Parenthood Center of New Haven was also a violation of said Section 53-32.

28. The actions of said Joan Forsberg, Marie Wilson Tindall and Rosemary Anne Stevens were violations of this [fol. 19] statute even though each of these women is married and living with her husband, since the prohibition of the statute against the use of such articles for such a purpose is absolute.

29. It was at the Planned Parenthood Center of New Haven that the said Joan Forsberg, Marie Wilson Tindall and Rosemary Anne Stevens sought and obtained instruction and medical advice and counsel as to methods of contraception, sought and obtained under medical supervision, the drugs, medicinal articles and instruments to prevent conception, described above, and sought and obtained medical counsel and advice as to the proper method of using these articles.

30. The actions of the defendants in supervising and participating in the operation of this Center where these women sought and obtained this advice and these materials, constituted assisting, abetting, counselling, causing and commanding these women to commit a violation of the Statute, Section 53-32, (contraceptive statute) and, the acts

of the defendants themselves being thus in violation of the Statute, Section 54-196 (accessory statute) made them amenable to prosecution and punishment as a principal offender.

31. The actions of the defendant Estelle T. Griswold in taking a case history from the said Rosemary Anne Stevens, in delivering orientation lectures describing the various methods of contraception available at the Center which were heard and acted upon by the said Joan Forsberg and the said Rosemary Anne Stevens, in directing a staff member at the Center to give the said Joan Forsberg the anti-ovulation pills and in herself giving to the said Rosemary Anne Stevens the orthogynol jelly, constituted assisting, abetting, counselling, causing and commanding two married women, the said Joan Forsberg and the said Rosemary Anne Stevens, to use drugs, medicinal articles and instruments for the purpose of preventing conception, in violation of said Sections 53-32 and 54-196 of the General Statutes of Connecticut.

32. The actions of the defendant C. Lee Buxton, a doctor, in giving the said Rosemary Anne Stevens, a married woman, a pelvic examination and in approving her choice of the orthogynol jelly as to method which she would use to prevent conception, and in instructing her as to the use of such jelly, constituted assisting, abetting, counselling, causing and commanding the said Rosemary Anne Stevens to use a drug or medicinal article for the purpose of [fol. 20] preventing conception, in violation of said Sections 53-32 and 54-196 of the General Statutes of Connecticut.

33. Such actions of the defendant C. Lee Buxton are crimes irrespective of the fact that such advice and instructions were given by him in his capacity as a medical doctor.

34. Both defendants are guilty as charged.

Third: The following rulings were made on the trial:

35. The State produced in chief Harold Berg, a Detective, New Haven Police Department, as a witness, who

testified on direct-examination as to certain articles obtained by him from patients of the Center which were contraceptives recommended by and furnished by the Center, and upon his cross-examination the witness was asked the following question:

"Now in the course of your investigation, Detective Berg, did you ascertain whether these products were available anywhere else in the City of New Haven?"

to which question the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that the defendants made such products available and furnished same to patients that such products could be obtained anywhere else in New Haven and/or were sold or furnished by others in New Haven, which objections were sustained by the Court and an exception taken by the defendants.

36. The defendants produced in chief Luther K. Musselman, as a witness, who having been qualified as a medical expert specializing in obstetrics and gynecology and practicing in the City of New Haven, Connecticut, upon his direct-examination was asked the following question:

"Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession as accepted practice for a physician to advise such a married woman suffering from any of these diseases or such a condition (hypertensive cardiovascular disease) that she should use drugs, medicinal articles or instruments to prevent pregnancy?"

"Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession as ac-
[fol. 21] cepted medical practice in this State for a physician to advise a married woman suffering from any of these—from such a condition—change that, that she should use drugs, medicinal articles or instruments to prevent pregnancy?"

"Doctor, do you have an opinion as to whether or not it is accepted medical practice in the State of Connecticut

for a physician to give advice to a married woman as to the use of drugs, medicinal articles or instruments to prevent conception where the married woman seeks such advice from the doctor for the purpose of planning her family and spacing her children?"

to each of which questions the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that a doctor had given advice to a patient as to the use of drugs, medicinal articles and instruments for the purpose of preventing conception, whether or not it is accepted medical practice in the State of Connecticut to give such advice under such circumstances as outlined in the questions, and in connection with the first question on the additional grounds that the question was not limited to the practice in the State of Connecticut, which objections were sustained by the Court and an exception taken by the defendants as to each question.

37. The defendants produced in chief Louis Middlebrook, as a witness, who having been qualified as a medical expert in the field of obstetrics and gynecology practicing in Hartford, Connecticut, upon his direct-examination was asked the following questions:

"Now, Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession in Connecticut as accepted medical practice for a physician to advise such a married woman suffering from such a condition (hypertensive cardiovascular disease) that she should use drugs, medicinal articles and instruments to prevent pregnancy?"

"Doctor, do you have an opinion whether or not it is generally regarded by the medical profession in Connecticut as accepted medical practice for a physician to give advice to a married woman as to the use of drugs, medicinal articles or instruments to prevent [fol. 22] conception when the married woman does not suffer from such a condition but when she merely seeks advice as to means of planning her family, and spacing and limiting the number of her children?"

to each of which questions the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that a doctor had given advice to a patient as to the use of drugs, medicinal articles and instruments for the purpose of preventing conception, whether or not it is accepted medical practice in the State of Connecticut to give such advice under such circumstances as outlined in the questions, which objections were sustained by the Court and an exception taken by the defendants as to each question.

Fourth: The defendants made the following claims of law respecting the judgment to be rendered, upon which the Court ruled as hereinafter stated:

38. The statute which penalizes the use of a drug, medicinal article or instrument for the purpose of preventing conception, Section 53-32 of the General Statutes of Connecticut, has no express or implied exception as to the persons subject to its prohibition and applies equally to all persons.

The Court so found.

39. The application of said statute in such manner as to prohibit married women from using drugs, medicinal articles or instruments for the purpose of preventing conception, would deprive such married women of their rights to life and liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The Court refused so to find.

40. Said statute is unconstitutional since it prohibits married women, among others, from using drugs, medicinal articles or instruments for the purpose of preventing conception, and since such prohibition denies to such married women their rights to life and liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The Court refused so to find.

41. In any prosecution under the provisions of Section 54-196 of the General Statutes of Connecticut, the State has

[fol. 23] the burden of proving not only that the defendant aided and encouraged another to commit an offense in violation of a criminal statute of this state, but also that thereafter such an offense was in fact committed by such other person.

The Court so found.

42. Since the provisions of Section 53-32 of the General Statutes of Connecticut cannot be constitutionally applied in such manner as to penalize the actions of the three married women, Joan Forsberg, Marie Wilson Tindall and Rosemary Anne Stevens, in using, for the purpose of preventing conception, the drugs, medicinal articles and instruments obtained by them from the Planned Parenthood Center of New Haven, the State has failed to prove an essential element of its case, the commission of an offense in violation of a substantive criminal statute.

The Court refused so to find.

43. The actions of the defendants in performing their administrative, supervisory and directory roles in the operation of a center in New Haven, Connecticut, where married women were furnished instruction and medical advice and counsel as to the use of contraceptives and were furnished, under medical supervision, with such contraceptives, do not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning of the prohibitions of Section 54-196 of the General Statutes of Connecticut.

The Court refused so to find,

44. The actions of the defendant Estelle T. Griswold in taking a case history of a patient at the Center, in delivering orientation lectures to the married women, at the Center in which she discussed the methods of contraception available at the Center, and in giving or directing others to give contraceptives to married women, did not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning of Section 54-196 of the General Statutes of Connecticut.

The Court refused so to find.

45. The actions of the defendant Estelle T. Griswold in delivering orientation lectures to the married women at the Center in which she discussed the methods of contraception available at the Center, are protected by the provisions of [fol. 24] First and Fourteenth Amendments to the Constitution of the United States and Article First, Sections 5 and 6 of the Constitution of the State of Connecticut, and such speech on her part does not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning of Section 54-196 of the General Statutes of Connecticut.

The Court refused so to find.

46. The defendant C. Lee Buxton is a physician and in examining the patient Rosemary Anne Stevens and advising her as to the use of a contraceptive, he was acting as a doctor performing professional duties.

The Court so found.

47. Application of the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut to the actions of the defendant C. Lee Buxton as described in paragraph 46 hereof would constitute a denial of his rights to liberty and property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

The Court refused so to find.

48. Application of the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut to the action of the defendant C. Lee Buxton in giving medical advice to his patients is a denial of his right to freedom of speech in violation of the provisions of the First and Fourteenth Amendments to the Constitution of the United States and Article First, Sections 5 and 6 of the Constitution of the State of Connecticut.

The Court refused so to find.

49. Application of criminal sanctions under the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut, to the defendant Estelle T. Griswold for her actions in taking a case history of a patient at the Center,

in delivering orientation lectures and instruction to married women at the Center in which she discussed the methods of contraception available at the Center, and in giving or directing others to give contraceptives to married women at the Center, denies to her her rights to life and liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

The Court refused so to find.

[fol. 25] 50. Application of criminal sanctions under the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut, to the defendants for their actions in performing their administrative, supervisory, and directory roles in the operation of a Center in New Haven, Connecticut, where married women were furnished instruction and medical advice and counsel as to the use of contraceptives and were furnished, under medical supervision, with such contraceptives, is a denial of their rights to life and liberty without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

The Court refused so to find.

51. The State has failed to establish that either defendant has committed an offense as charged in the information.

The Court refused so to find.

All exhibits admitted in evidence in the hearing of these cases are hereby made a part of the Finding and may be used without printing.

LACEY, *J.*

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

July 31, 1962

No. CR6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

MOTION TO CORRECT FINDING

The appellants in the above-entitled case respectfully move that the finding be corrected as follows:

1. By striking out the words "because as a medical doctor he felt he was justified in giving such advice and instruction in the light of expert medical opinion" of paragraph 21, and substituting the words "because, based on the overwhelming opinion of medical experts in this country, this type of advice is an aspect of medical care which it is the responsibility of every doctor to furnish when, in his opinion the patient should have it, and he therefore felt justified as a medical doctor in giving such advice and instruction."

[fol. 26] 2. By adding the words "and that she should avoid and prevent a pregnancy." to the end of paragraph 23.

3. By adding the words "and he, as a doctor, is required by the accepted standards of the medical profession to commit such acts." to the end of paragraph 33.

The appellants annex hereto as Exhibit A all of the evidence material to the determination of this motion, certified by the stenographer who took it.

The Appellants, By Catherine G. Roraback, Their Attorney.

Certificate of Service (omitted in printing).

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

August 22, 1962

No. CR6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

MEMORANDUM ON MOTION TO CORRECT FINDING.

Pursuant to the motion of the defendants to correct the finding, the trial court does hereby amend the Finding in the following particulars:

1. By striking out the words "because as a medical doctor he felt he was justified in giving such advice and instruction in the light of expert medical opinion" contained in Paragraph 21 of the Finding and substituting in place thereof the following: "because based on the overwhelming opinion of medical experts in this country, this type of advice is an aspect of medical care which it is the respon- [fol. 27] sibility of every doctor to furnish when, in his opinion, the patient should have it, and he therefore felt justified as a medical doctor in giving such advice and instruction."

2. By adding the words "and that she should avoid and prevent a pregnancy" to the end of paragraph 23.

No further additions or corrections.

LACEY, *J.*

Filed Sept. 13, 1962

IN THE CIRCUIT COURT, SIXTH CIRCUIT,
AT NEW HAVEN, CONNECTICUT

September 26, 1962

No. CR6-5653

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD

No. CR6-5654

STATE OF CONNECTICUT

vs.

C. LEE BUXTON

ASSIGNMENT OF ERRORS

The Court erred:

1. In overruling the demurrers to each of the informations.

2. In that the information and findings of the trial court do not support the judgment because:

a. The provisions of Section 53-32 of the General Statutes are unconstitutional, since there is no exception as to the persons subject to their prohibition, and since their application in such manner as to prohibit *married* women from using drugs, medicinal articles or instruments for the purpose of preventing conception, would deprive such married women of their rights to life and liberty without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

b. The defendants are here charged under the provisions of Section 54-196 of the General Statutes of Connecticut, with aiding and abetting married women to commit offenses under said Section 53-32 of the General Statutes. One of the essential elements which the prosecution must prove to establish a violation of Section 54-196 is that a substantive offense was in fact committed. Since the provisions of Section 53-32 cannot [fol. 28] be constitutionally applied in such manner as to penalize the actions of married women in using, for the purposes of preventing conception, drugs, medicinal articles and instruments obtained by them through, and with the advice and encouragement of, the defendants, and since it is only the actions of such *married* women which the State claims to constitute such substantive offenses, the State has failed to prove the commission of a substantive offense and thus failed to establish a violation of Section 54-196.

c. The actions of the defendants in performing their administrative, supervisory and directory roles in the operation of a center in New Haven, Connecticut, under medical supervision and control, where *married* women were furnished medical advice and counsel as to the use of contraceptives and were furnished, under medical supervision, with such contraceptives, do not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning

of the prohibitions of Section 54-196 of the General Statutes of Connecticut.

d. The actions of the defendant Estelle T. Griswold in taking a case history of a patient at the Center, in delivering orientation lectures to the married women at the Center, in which she discussed the methods of contraception available at the Center, and in giving or directing others to give contraceptives to married women, did not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning of Section 54-196 of the General Statutes of Connecticut.

e. The actions of the defendant Estelle T. Griswold in delivering orientation lectures to the married women at the Center in which she discussed the methods of contraception available at the Center, are protected by the provisions of the First and Fourteenth Amendments to the Constitution of the United States and Article First, Sections 5 and 6 of the Constitution of the State of Connecticut, and such speech on her part does not constitute "assisting, abetting, counselling, causing or commanding" another to commit an offense within the meaning of Section 54-196 of the General Statutes of Connecticut.

f. The defendant C. Lee Buxton is a physician, and in examining a married woman and advising her as [fol. 29] to the use of contraceptives he was performing professional duties. The application in this prosecution of the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut to these actions of the defendant Buxton are unconstitutional since such application would deny to him his rights to liberty and property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

g. Application of the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut to the action of the defendant C. Lee Buxton in giving

medical advice to his patients is a denial of his right to freedom of speech in violation of the provisions of the First and Fourteenth Amendments to the Constitution of the United States and Article First, Sections 5 and 6 of the Constitution of the State of Connecticut.

h. Application of criminal sanctions under the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut, to the defendant Estelle T. Griswold for her actions in taking a case history of a patient at the Center, in delivering orientation lectures to married women at the Center in which she discussed the methods of contraception available at the Center, and in giving or directing others to give, under medical supervision, contraceptives to married women at the Center, denies to her her rights to life and liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

i. Application of criminal sanctions under the provisions of Sections 53-32 and 54-196 of the General Statutes of Connecticut, to the defendants for their actions in performing their administrative, supervisory, and directory roles in the operation of a Center in New Haven, Connecticut, under medical supervision and control, where *married* women were furnished medical advice and counsel as to the use of contraceptives, and were furnished, under medical supervision, with such contraceptives, is a denial of their rights to life and liberty without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

j. The State has failed to establish that either defendant has committed an offense as charged in the informations.

[fol. 30] 3. In reaching the conclusions set forth in paragraphs 30 through 33 of the Finding when the facts set forth in the finding do not support them.

4. In failing to correct the Finding by adding thereto the facts stated in paragraph 3 of appellants' Motion to Correct the Finding, which were admitted and undisputed.

5. In rejecting the testimony of Harold Berg, as appears in Exhibit A annexed hereto and in paragraph 35 of the Finding.

6. In rejecting the testimony of Luther K. Musselman as appears in Exhibit B annexed hereto and in paragraph 36 of the Finding.

7. In rejecting the testimony of Louis Middlebrook as appears in Exhibit C annexed hereto and in paragraph 37 of the Finding.

8. In concluding upon all the evidence that the defendants were guilty of the crime charged beyond a reasonable doubt.

The Defendants, By Catherine G. Roraback, Their Attorney.

Filed Sept. 26, 1962

EXHIBIT "A"

The State produced in chief Harold Berg, a Detective, New Haven Police Department, as a witness, who testified on direct-examination as to certain articles obtained by him from patients of the Center which were contraceptives recommended by and furnished by the Center, and upon his cross-examination the witness was asked the following question:

"Now, in the course of your investigation, Detective Berg, did you ascertain whether these products were available anywhere else in the City of New Haven?"

to which question the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that the defendants made such products available and furnished same to patients that such products could be

obtained anywhere else in New Haven and/or were sold or furnished by others in New Haven, which objections were sustained by the Court and an exception taken by the defendants.

[fol. 31]

EXHIBIT "B"

The defendants produced in chief Luther K. Musselman, as a witness, who having been qualified as a medical expert specializing in obstetrics and gynecology and practicing in the City of New Haven, Connecticut, upon his direct-examination was asked the following questions:

"Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession as accepted practice for a physician to advise such a married woman suffering from any of these diseases or such a condition (hypertensive cardiovascular disease) that she should use drugs, medicinal articles or instruments to prevent pregnancy?"

"Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession as accepted medical practice in this State for a physician to advise a married woman suffering from any of these—from such a condition—change that, that she should use drugs, medicinal articles or instruments to prevent pregnancy?"

"Doctor, do you have an opinion as to whether or not it is accepted medical practice in the State of Connecticut for a physician to give advice to a married woman as to the use of drugs, medicinal articles or instruments to prevent conception where the married woman seeks such advice from the doctor for the purpose of planning her family and spacing her children?"

to each of which questions the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that a doctor had given advice to a patient

as to the use of drugs, medicinal articles and instruments for the purpose of preventing conception, whether or not it is accepted medical practice in the State of Connecticut to give such advice under such circumstances as outlined in the questions, and in connection with the first question on the additional grounds that the question was not limited to the practice in the State of Connecticut, which objections were sustained by the Court and an exception taken by the defendants as to each question.

EXHIBIT "C"

The defendants produced in chief Louis Middlebrook, as a witness, who having been qualified as a medical expert in [fol. 32] the field of obstetrics and gynecology practicing in Hartford, Connecticut, upon his direct-examination was asked the following questions:

> "Now, Doctor, do you have an opinion as to whether or not it is generally regarded by the medical profession in Connecticut as accepted medical practice for a physician to advise such a married woman suffering from such a condition (Hypertensive cardiovascular disease) that she should use drugs, medicinal articles and instruments to prevent pregnancy?"
>
> "Doctor, do you have an opinion whether or not it is generally regarded by the medical profession in Connecticut as accepted medical practice for a physician to give advice to a married woman as to the use of drugs, medicinal articles or instruments to prevent conception when the married woman does not suffer from such a condition but when she merely seeks advice as to means of planning her family, and spacing and limiting the number of her children?"

to each of which questions the State objected on the grounds that it was immaterial and irrelevant in a prosecution involving a charge that a doctor had given advice to a patient as to the use of drugs, medicinal articles and instruments

for the purpose of preventing conception, whether or not it is accepted medical practice in the State of Connecticut to give such advice under such circumstances as outlined in the questions, which objections were sustained by the Court and an exception taken by the defendants as to each question.

IN THE CIRCUIT COURT OF CONNECTICUT,
APPELLATE DIVISION

Date of Judgment January 7, 1963

Decision Announced January 17, 1963

File No. CR 6-5653 AP

STATE OF CONNECTICUT

v.

ESTELLE T. GRISWOLD

File No. CR 6-5654 AP

STATE OF CONNECTICUT

v.

C. LEE BUXTON

Argued October 19, 1962.

[fol. 33] Informations charging the defendants with the crime of assisting and abetting the use of drugs, medicinal articles and instruments for the purpose of preventing conception; brought to the Circuit Court in the sixth circuit and tried to the court, *Lacey, J.*; judgment of guilty in each case and appeal by the defendants. *No error; certified to the Supreme Court of Errors.*

CATHERINE C. RORABACK, for the appellants, (defendants).

JULIUS MARETZ, prosecuting attorney, and JOSEPH B. CLARK, assistant prosecuting attorney, for the appellee (for the appellee (State).

OPINION—January 7, 1963

KOSICKI, *J.* Both of these cases were tried together and, by stipulation, the appeals from the judgments rendered have been combined. The informations contained identical allegations charging each defendant with a violation of §§ 52-32 and 54-196 of the General Statutes in that each defendant "did assist, abet, counsel, cause and command certain married women to use a drug, medicinal article and instrument, for the purpose of preventing conception . . . and that thereafter said married women in consequence of said conduct [of the defendant] did in fact use said drugs, medicinal articles, and instruments for the purpose of preventing conception." [1] In each case a demurrer was filed on the ground that the quoted sections of the General Statutes were unconstitutional as here applied because (1) they denied the defendants their rights to liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States and (2) they denied them their rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States and §§ 5 and 6 of Article First of the Constitution of Connecticut. Both demurrers were overruled and error is assigned in the ruling of the court.

The court found the following facts. The Planned Parenthood Center of New Haven, referred to herein as Center, was opened on November 1, 1961 to provide information, instruction and medical advice to married persons as to means and methods of preventing conception and to educate persons generally as to such means and methods. The Center was located in eight rooms on the second floor of a building at 79 Trumbull Street in New Haven, which consisted of a reception room, waiting room, interview room, consultation room, examining room, two dressing rooms and a laboratory. The Center operated from November

[fol. 34] 1 to November 10 when it was closed following the arrest of the defendants. The Planned Parenthood League occupied an office consisting of four rooms on the second floor of the same building. The defendant Estelle T. Griswold held the salaried office of executive director of the League. She was also the acting director of the Center and in charge of administration and the educational program.

The defendant C. Lee Buxton is a physician, licensed to practice in the state of Connecticut, who is a specialist in the field of obstetrics and gynecology, the director of the University Obstetrical and Gynecological Service at the Grace-New Haven Community Hospital in New Haven, Connecticut, the chairman of the Department of Obstetrics and Gynecology and Professor of Obstetrics and Gynecology at the Yale University Medical School in New Haven, an author in the field of his specialty and a leader in its professional organizations. He was the medical director of the Center, both before its opening and while it was in operation from November 1 to November 10, 1961. As such medical director and after consultation with the Medical Advisory Committee of the Center, which committee was appointed by him, Doctor Buxton made all medical decisions as to the facilities of the Center, the arrangement of its rooms, the equipment purchased for it, the medical forms, patients' history forms and other forms used there, the procedures followed in processing the patients at the Center, the types of contraceptive advice available and provided at the Center, the types of contraceptive articles and materials available at the Center for distribution to patients, the methods of providing the same, and the selection, assignment and supervision of the medical doctors to staff the Center. In addition, Dr. Buxton on several occasions, as a physician, examined and gave contraceptive advice to patients at the Center while it was in operation from November 1 to November 10, 1961.

The general procedure for the processing of a patient of the Center was as follows: Individuals called the Center by telephone or came in making inquiry, and were briefly questioned to ascertain whether they were in fact seeking contraceptive advice and, if so, they were given an appoint-

ment for a stated day and hour. The patient, having come to the Center at the appointed time, was first interviewed by a staff member who took a case history of the patient on a standard form on which was entered the patient's name, her husband's name, ages of both, employment, fam- [fol. 35] ily income, other economic information, the patient's pregnancy history, method of contraception previously used, the reason for desiring a change of method, and the pertinent medical history of the patient, her husband and children. After this the patient attended a group orientation session with other patients at which all of the methods of contraception available at the Center were described, at the conclusion of which lecture the patient selected the method which she desired to use and as to which she wished to obtain further information and advice.

Thereafter each patient individually saw a staff doctor who gave her a pelvic examination, reviewed the method of contraception selected by the patient in the light of this examination and of her medical history, and prescribed to the patient the method selected by her unless it was contraindicated. The doctor or nurse then gave the patient advice as to how to use the method of contraception prescribed, and advised her when to return to the Center for further consultation and advice.

The patient was then furnished with the contraceptive device, drug or contraceptive material prescribed by the doctor, made an appointment for a return visit, was charged a fee for the visit and left. The fees charged to the patient were on a sliding scale ranging from nothing to a maximum of $15.00 and the exact fee charged any one patient was determined on the basis of family income. In the waiting room and available to patients were various pamphlets some of which contained information, instruction and advice on the various methods of contraception available.

Joan B. Forsberg, a housewife and mother of three children living with her family in New Haven, upon learning of the existence of the Center, arranged for an appointment at the Center which was made for November 8, 1961 and on that date she went to the Center as a patient, seek-

ing contraceptive advice, where she had her case history taken by a receptionist, attended an orientation session at which the defendant Estelle T. Griswold instructed her and other women as to the various methods of contraception available at the Center and told the patients they could choose the method they would individually prefer and be furnished with the necessary materials if the doctor approved, was given a pelvic examination by a staff doctor, was told by the staff doctor that the anti-ovulation pill method of contraception which she had chosen was all right [fol. 36] for her to use, was instructed by the doctor in its use, was thereafter given a supply of sixty anti-ovulation pills by the person on duty at the registration desk at the direction of the defendant Estelle T. Griswold, and before leaving paid a fee to the Center and was told to return to the Center in two months. After her visit to the Center, Mrs. Fosberg used approximately thirty of the pills furnished to her at the Center, for the purpose of preventing conception.

On November 7, 1961, one Marie Wilson Tindall, a housewife and mother of several children, living with her family in New Haven, after having made an appointment beforehand, went to the Center with her husband in order to obtain information concerning contraception. She had her case history taken by the receptionist, attended an orientation session with other patients at which were described the various types of contraceptives available at the Center, was given a pelvic examination by a staff doctor, told the doctor that she had chosen a diaphragm as the type of contraceptive she wished to use, was fitted and given by the doctor a diaphragm and accompanying articles and thereafter was instructed by one of the personnel in how to use them, and before leaving paid a fee of $7.50 to the Center. After her visit to the Center, Mrs. Tindall used the diaphragm and other articles furnished to her at the Center for the purpose of preventing conception.

On November 9, 1961, one Rosemary Anne Stevens, a young student married nearly a year and living with her husband in New Haven having made an appointment, went to the Center seeking to obtain contraceptive advice addi-

tional to that previously obtained by her in England. While at the Center she had her case history taken by the defendant Estelle T. Griswold, attended an orientation session at which the defendant Estelle T. Griswold described the methods of contraception available at the Center, was given a pelvic examination by the defendant Dr. C. Lee Buxton acting as a staff doctor on that day at the Center, was advised by him that the method of contraception which she had been using and had chosen was satisfactory for her, was given instruction by him as to its use, and, before leaving the Center was given a tube of contraceptive jelly by the defendant Estelle T. Griswold and paid a fee of $15.00 to the Center. After her visit to the Center, the said Mrs. Stevens used this jelly for the purpose of preventing conception.

The defendant C. Lee Buxton served as medical director of the Center and furnished, at the Center, medical advice [fol. 37] to married women as to the use of drugs, contraceptive articles and materials and instruments for the purpose of preventing conception because in his judgment, based on the overwhelming opinion of medical experts in this country, this type of advice is an aspect of medical care which it is the responsibility of every doctor to furnish when in his opinion the patient should have it, and he therefore felt justified as a medical doctor in giving such advice and instruction.

It is the opinion of doctors who practice and specialize in the practice of obstetrics and gynecology in the city of New Haven and in the state of Connecticut, that it is accepted medical practice for a physician to advise a woman suffering from a serious medical condition such as hypertensive cardiovascular heart disease that pregnancy would be detrimental to her health and that she should avoid such pregnancy. Mrs. Griswold served as administrative director of the Center and participated in its operation because she felt that medically prescribed methods of contraception should be made available to the married women of Connecticut in order that they might protect their health as mothers, the emotional and economic stability of their families and promote responsible parenthood.

The issues of constitutionality of § 53-32, raised by demurrer, and urged in the trial and on appeal are fundamentally not new. The statute had been declared as not violative of the Fourteenth Amendment by our Supreme Court of Errors in a number of cases presenting a variety of factual situations, including those described in the foregoing recital. In those cases were involved alleged violations of the same constitutional rights that are the subject of main concern in this appeal. *Buxton* v. *Ullman* (and companion cases), 147 Conn. 48, 156 A. 2d 508, 367 U. S. 497, 6 L. Ed. 2d 989, (appeals dismissed for absence of justifiable controversy); *Trubeck* v. *Ullman*, 147 Conn. 633, 165 A. 2d 158, 367 U. S. 907, 6 L. Ed. 2d 1249, (appeal dismissed, certiorari denied); *Tileston* v. *Ullman*, 129 Conn. 84, 26 A. 2d 582; 318 U. S. 44, 87 L. Ed. 603, (appeal dismissed "no standing"); *State* v. *Nelson*, 126 Conn. 412, 11 A. 2d 856. It has been repeatedly stated that § 53-32 is a valid exercise of the police power of the state; that no exceptions could be injected into the statute to allow physicians to advise and prescribe the use of contraceptive devices for use by married women; that such use was not permissible even in situations where, in the opinion of a competent physician the "general" health and well-being of the patient required [fol. 38] it or pregnancy posed a real and immediate threat to the life and health of the patient. See *Buxton* v. *Ullman*, supra, 51-54, 55, and cases cited; *Trubek* v. *Ullman*, supra, 655.

The chief contention of the defendants, relating to their conviction as accessories, is that (1) § 53-32 could not be applied constitutionally to penalize the actions of the three married women, as described above; therefore, (2) there were no substantive offenses committed by them to which the defendants could have been accessories. It is unquestionably the law that an offense must have been committed before a person can be charged as accessory to its commission, *State* v. *Wakefield*, 88 Conn. 164, 175. That does not mean that the principal offender must have been first convicted or even prosecuted, *State* v. *Gargano*, 99 Conn. 103, 109. The test is whether one charged as an accessory shared in the unlawful purpose and knowingly and willfully

assisted the perpetrator in the acts which prepared for, facilitated or consummated the offense. *State* v. *Pundy*, 147 Conn. 7, 11.

Much of the defendants' brief dealing with the commission of the substantive offense, is directed toward an attack on the constitutionality of the statute because of its invasion of the freedom of conjugal felicity which married couples, by the natural order of society, are entitled to enjoy. It is stated that enforcement of the statute would result in an invasion of privacy, a violation of the sanctities of the home and a gross intrusion into the most sacred area of life. These rights and freedoms are protected both by our federal and state constitutions and there is no suggestion in the record or in the evidence that they have been invaded. They are the rights guaranteed to the married persons involved and not the rights of these defendants. *Tileston* v. *Ullman*, 318 U. S. 44, 46, 87 L. Ed. 603, 604.

The necessary proof of the offense was supplied by the voluntary testimony of the three married women. This evidence was not coerced nor was it illegally or surreptitiously obtained. It was also found indisputably that the defendants performed the various acts described above in assisting, abetting and counselling the use of contraceptives by each of these women and that the contraceptive devices and materials were so used. That was the acknowledged purpose of the clinic in the operation of which the defendants admittedly participated. There was no error in overruling the demurrers and the conclusion of the court that the defendants were guilty under the cited statutes must stand.

[fol. 39] The next main contention of deprivation of constitutional rights relates to the claim of the defendant Dr. Buxton that in giving the advice he did he was conscientiously discharging his duties as a competent physician and a recognized authority in the field of obstetrics and gynecology; and depriving him of this right is a denial of his constitutional guarantee to freedom of speech in violation of the first and fourteenth amendments to the constitution of the United States and Article First, §§ 5 and 6, of the Constitution of Connecticut. This claim had not been expressly asserted in the earlier cases cited above; we are not

warranted in concluding, however, that this omission was due to oversight on the part of court and counsel or a knowing fragmentation of constitutional issues to be reserved for later presentation. The rule in *Buxton* v. *Ullman*, 147 Conn. 48, 51-55, appears to be inclusive of the claim now being separately presented as a curtailment of freedom of speech, that is particularly so because there can be no practical separation of facts to divide the acts of prescribing and furnishing the contraceptive materials and the words and speech accompanying such acts. Both were part of the practice of medicine which, to the extent inhibited by the statute in question, must yield to the police power of the state. *State* v. *Nelson*, 126 Conn. 412, 422.

In view of the decisions of our Supreme Court of Errors, which we must consider as controlling, we regard the remaining arguments addressed to the alleged unconstitutional aspects of § 53-32, as a recapitulation of what our courts have already considered declared to be matter for legislative rather than judicial consideration. Our examination of the records and briefs in the former cases confirms our belief that not only the same or nearly identical claims of law but also substantially similar comments and opinions, liberally quoted from medical and religious sources, had been urged upon our courts and the answer has been the same. See *State* v. *Nelson*, supra, Conn. Supreme Court Rec. & Briefs, A-144; *Tileston* v. *Ullman*, supra, Conn. Sup. Ct. Rec. & Briefs, A-172; *Buxton* v. *Ullman*, supra, Conn. Sup. Ct. Rec. & Briefs, A-380; *Trabek* v. *Ullman*, supra, Conn. Sup. Ct. Rec. & Briefs, A-391.

Every general law, in its ultimate objective, is declaratory of public policy. The wisdom or unwisdom of legislation is not subject to judicial examination unless it so interferes with rights of individuals as to require judicial intervention for their protection. The possibility or present predictability of failure in the legitimate aims of a legisla-
[fol. 40] tive enactment, or even a previsive estimate of futility in the attempt, does not pose a question for judicial determination. *State* v. *McKee*, 73 Conn. 18, 30. A law, to be held unconstitutional, must be plainly violative of some constitutional mandate and admit of no other reasonable

construction. "Whatever may be our own opinion regarding the general subject, it is not for us to say that the legislature might not reasonably hold that the artificial limitation of even legitimate child-bearing would be inimical to the public welfare and, as well, that the use of contraceptives, and assistance therein or tending thereto, would be injurious to public morals . . . *State* v. *Nelson*, supra, 424.

It is not alone for the preservation of morality in the religious sense that the legislature may have been impelled to act, but also for the perpetuation of race and to avert those perils of extinction of which states and nations have been alertly aware since the beginning of recorded history. Each civilized society has a primordial right to its continued existence and to the discouragement of practices that tend to negate its survival.

The record is bare of any showing that the law imposes any restraints on the protected liberties and the guaranteed rights of the defendants; and the merely notional, metaphysical or moral constraints, to which its preventive force is directed, are not such as to fall within constitutional prohibitions.

The remaining assignments of error are directed toward rulings excluding certain proffered evidence and the denial of one paragraph of the motion to correct the finding. What has been said above and the decisions referred to herein support the correctness of the court's rulings.

The questions involved are deemed to be of great public importance and it is found that there are substantial questions of law which should be reviewed by the Supreme Court of Errors, namely:

1. Have the defendants been denied their rights to liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States?

2. Have the defendants been denied their rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States and Sections 5 and 6 of Article first of the Constitution of Connecticut?

[fol. 41] There is no error; the case is certified to the Supreme Court of Errors.

In this opinion PRUYN and DEARINGTON, Js. concurred.

FOOTNOTE

1. Sec. 53-32. USE OF DRUGS OR INSTRUMENTS TO PREVENT CONCEPTION. Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

2. "Sec. 54-196. ACCESSORIES. Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

The foregoing is a true copy of the original opinion as filed with the Chief Clerk of the Circuit Court, but the opinion is subject to alteration and addition by the Judges until printed in the Connecticut Supplement.

Elliott R. Katz, Chief Clerk.

IN THE CIRCUIT COURT OF CONNECTICUT,
APPELLATE DIVISION

At a session of the Appellate Division of the Circuit Court held at New Haven in the State of Connecticut on October 19, 1962

On appeal from Circuit Court, Sixth Circuit

File No. CR 6-5653 AP

STATE OF CONN.

vs.

ESTELLE T. GRISWOLD

File No. CR 6-5654 AP

STATE OF CONN.

vs.

C. LEE BUXTON

JUDGMENT

This appeal by the defendants, Estelle T. Griswold and C. Lee Buxton from the judgment of said Circuit Court Sixth Circuit was taken on the 12th day of January 1962.

On the 26th day of September 1962, the appellant filed his assignments of error claiming errors of law in the record, judgment, proceedings and decision of said Court as [fol. 42] may appear in the record on file in said Court, and said appeal came to this session of the Appellate Division on October 9, 1962, when the parties appeared.

This Court, having heard the parties, finds that in the record, judgment, proceedings and decisions of said Court there is NO error, and certified to the Supreme Court of Errors.

Judgment entered January 7, 1963 By the Court,

January 18, 1963.

Paul M. Foti, Clerk.

IN THE SUPREME COURT OF ERRORS
OF THE
STATE OF CONNECTICUT

Circuit Court of Connecticut, Appellate Division

File Numbers CR 6-5653 AP
CR 6-5654 AP

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD
AND C. LEE BUXTON

PETITION FOR CERTIFICATION BY SUPREME COURT OF ERRORS

Appellate Panel: KOSICKI, *J.*, PRUYN, *J.*, DEARINGTON, *J.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Errors:

Defendants Estelle T. Griswold and C. Lee Buxton respectfully show:

Statement of This Case

Defendants were arrested on November 10, 1961, on informations issued by the prosecuting attorney for the Circuit Court, Sixth Circuit, charging in essentially the same language that each defendant "did assist, abet, counsel, cause and command certain married women to use a drug, medicinal article and instrument for the purpose of preventing conception . . . and that thereafter said married women in consequence of said conduct did in fact use said [fol. 43] drugs, medicinal articles and instruments for the purpose of preventing conception", in violation of Sections 53-32 and 54-196 of the General Statutes of Connecticut.

Demurrers were filed to each of these informations on the grounds that the application of these statutes to the actions of these defendants was unconstitutional because it constituted (1) a denial of defendants' rights to liberty and

property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and (2) a denial of defendants' rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States and Sections 5 and 6 of Article First of the Constitution of the State of Connecticut.

The demurrers were overruled, the defendants pleaded not guilty to the informations and were tried to the Court, (Lacey, J.), and found guilty. Fines of $100. were imposed on each defendant.

In essence the evidence on which these convictions were based was that the defendant Griswold and the defendant Buxton were respectively the administrative director and the medical director of a center operated from November 1 through November 10, 1961, in New Haven, where married women sought and obtained information and medical advice as to the use of contraceptives, and obtained such contraceptives as were medically approved for them at the center, and that these married women thereafter used these contraceptives to prevent conception in their marital relations with their spouses.

Defendants appealed from the judgments entered. A finding was filed by the Court. A motion to correct this finding filed by the defendants was granted in part. Defendants then filed a lengthy assignment of errors which were pursued in the appeal.

The appellate panel found no error in the judgments of the trial court but certified to this Court for review two of the questions raised by the defendants in their assignment of errors. These are the two constitutional questions posed by defendants in their demurrers, as set forth above.

The Questions Presented by This Petition

In their brief in the court below, defendants summarized the assignments of error urged as issues in the appeal by asking whether the Court erred:

> [fol. 44] 1. In finding that offenses were committed in violation of the provisions of Section 53-32 of the General Statutes of Connecticut when married women

used contraceptives for the purpose of preventing conception?

2. In finding that the appellants assisted the commission of such offenses by supervising and participating in the operation of a medical center where these married women sought and obtained these contraceptives and medical advice concerning the same?

3. In finding that the specific speech and conduct of these defendants constituted assisting, abetting, counselling, causing and commanding these married women to commit these offenses?

4. In failing to find that the application of Sections 53-32 and 54-196 of the General Statutes to the actions of these defendants violated their rights to freedom of speech and to life, liberty and property without due process of law, in violation of the provisions of the Constitutions of the United States and the State of Connecticut?

5. In failing to conclude that the defendant Dr. Buxton was required by the accepted standards of the medical profession to commit the actions which he did?

6. In failing to admit expert medical testimony as to the accepted standards of the medical profession in Connecticut and elsewhere as to the use and prescription of contraceptives?

7. In failing to admit testimony as to the availability of contraceptives in Connecticut?

8. In failing to conclude that the defendants were not guilty of the crime charged?

As can be seen, paragraph #4 above combines in one question the two questions raised by defendants in their demurrers and now certified to this Court for review by the Appellate Panel. Although some of the others may by inference be deemed to be encompassed within the broad constitutional questions already certified, the defendants urge that for the sake of clarity as well as the reasons urged

below, all of the questions as stated above be certified for review by this Court.

[fol. 45] The Reasons Why Certification of These Questions Should Be Granted

I.

As is recognized by the Appellate Panel in its opinion (see pages 7-8 thereof), one of the main arguments pressed throughout by the defendants is that they cannot be charged as "accessories" to the commission of an act which is itself not an "offense", and that there is no substantive offense charged or proven here, since the use by married women of drugs, medicinal articles and instruments to prevent conception in their marital relations cannot be constitutionally be held to come within the purview of permissible legislative action.

The Appellate Panel seeks to dispose of this part of the argument by reference to the holding of *Tileston* v. *Ullman*, 318 U.S. 44, that one cannot assert the unconstitutionality of a statute because of its infringements of the constitutional rights of those other than those making the assertion, and further by holding that the commission of the "offense" here was proven by the voluntary testimony of married women that they did in fact use certain drugs or articles for the purpose of preventing conception.

This, however, begs defendants' argument. We submit that use by married women of such articles to prevent conception is not in any event, because it cannot constitutionally be, a criminal offense, and that thus evidence as to the use by married women of these articles for this purpose does not establish the commission of an offense. If this be correct, it follows that the application of the accessory statute in such manner as to penalize defendants for assisting and advising these married women to do acts which are not unlawful deprives defendants of their own constitutional rights to liberty and property without due process of law.

Defendants have a real and substantial interest in the determination of the question of the constitutionality of the application of the substantive statute to the actions of

married. On the determination of this question may hang the ultimate determination of their own criminal guilt or innocence of the charges on which they were convicted in the lower court. Such an interest entitles defendants to an adjudication of the question in this appeal.

[fol. 46] The presentation and determination of the question may of course be encompassed within the first question certified to this Court by the Appellate Panel—whether application of these statutes to the defendants violates their rights to liberty and property without due process of law under the Fourteenth Amendment to the Constitution of the United States. The Appellate Panel, in its opinion here, recognizes that married persons do have a right of privacy and a "freedom of conjugal felicity" guaranteed by both our state and federal constitutions. (Opinion at page 8). However, the panel seems to conclude that these do not constitutionally preclude or negate legislation within the constitutionally protected area, but only serve as a bar to prosecution. It is with this conclusion that defendants disagree. Cases are almost too numerous to mention in which statutes have been held to be unconstitutional because of their invasion of protected rights. See, for instance, *Cantwell* v. *Connecticut*, 310 U.S. 296 (1939). *Meyer* v. *Nebraska*, 262 U.S. 390 (1922), *State* v. *Miller*, 126 Conn. 373 (1940), *Hart* v. *Board of Medical Examiners*, 129 Conn. 128 (1942). The objections posed to the substantive statute here are more than merely procedural—if sustained, the application of the law to the acts of married persons would be held to be unconstitutional and there would be no "offense" to which defendants could be accessories.

The nature and scope of these rights of married persons, the extent and propriety of their invasion by the substantive statute here before the Court, and the standing of these defendants to assert them are substantial questions which should be clearly before the Court in its consideration of this appeal.

II.

The defendants also asigned as error and argued at length below the question of whether the accessory statute, Section 54-196 of the General Statutes of Connecticut, was

properly applied by the Trial Court to the actions of the defendants in supervising and participating in a clinic where married persons could seek and obtain information and medical advice relative to contraceptives and, under medical supervision and prescription, the contraceptives themselves.

In part this argument is closely allied with, but not necessarily fully encompassed by the questions certified by the Appellate Panel to this Court.

[fol. 47] Thus the words of the information charging defendants here as accessories states in the words of the statute that they did "counsel, cause and command" others to do certain acts. Quaere—do the words and expressions of the defendants which constitute such "counselling and commanding" fall within the area of constitutionally protected speech and expression?

Whether or not they do, however, defendants submit that their words and actions on which their convictions were here sustained do not constitute that active encouragement, solicitation and incitement which are required for conviction by the statutory and charging words "counsel, cause and command". See, for instance, *United States* v. *Peoni*, 100 F. 2d 401, 402 (2nd Cir., 1938); *State* v. *Teahan*, 50 Conn. 92 (1882); *State* v. *Scott*, 80 Conn. 317, 323 (1907).

It was further argued at length below that defendants' actions do not constitute as a matter of law "assisting and abetting" the commission of an offense, within the meaning of those words as used in the accessory statute and the informations here. Thus, for instance, it has been held that furnishing others with the instruments with which an offense is later committed is not necessarily sufficient to establish one as an accessory to the offense, especially where such instruments are freely available elsewhere. *United States* v. *Falcone*, 109 F. 2d 579, 581 (2nd Cir., 1940); *State* v. *Scott*, supra at pages 323-324.

Even more essential to a finding of guilt under our accessory law is the existence of "criminal intent and (a) community of unlawful purpose shared by one who knowingly and wilfully assists the perpetrator of the offense". *State* v. *Pundy*, 147 Conn. 7, 12 (1959). Defendants submit that the evidence here does not establish such an intent on

their part. The extent to which the actions of married persons may be subject to the prohibitions of the substantive statute itself raises doubts as to whether there may be that "community of unlawful purpose" between the defendants and these married persons. So, too, the actions here of the defendant Buxton, a physician, were in his opinion required in the proper pursuit of his professional obligations, a fact belying criminal intent on his part. Similarly, the aid given by the defendant Griswold to him in the performance of his professional duties cannot be more criminal.

These assignments of error and arguments of the defendants relative to the scope and applicability of our [fol. 48] accessory law to the facts of this case are not even touched upon by the Appellate Panel in its decision. The defendants urge that they should be considered by this Court since they are so intertwined with the questions already certified and further since they involve important questions which call for further clarification in our law.

III.

The Appellate Panel dismissed out of hand certain of the defendant's assignments of error addressed to rulings upon evidence.

One group of these relates to the exclusion by the trial court of defendants' proffers of expert medical evidence as to the accepted standards of the profession in Connecticut and elsewhere as to the use and prescription of contraceptives.

Defendants submit that this evidence would have been relevant (1) to the questions raised by the defendant Buxton as to whether application of the statutes here in such manner as to penalize his actions in the performance of his professional duties was constitutionally permissible, and (2) to the question of whether there was that "criminal intent and community of unlawful purpose" present on the part of these defendants necessary to sustain their convictions as accessories.

The other evidentiary question raised in the appeal related to the refusal of the trial court to permit defendants to ask questions of a police witness on cross-examination as

to the general availability of contraceptives in New Haven. Such evidence would have been relevant to counter the charge of being an accessory, as discussed briefly under II. above.

The refusal of the trial court to permit this evidence, and the failure of the Appellate Panel to deal with these assignments of error raise important problems on the appeal. Defendants urge this Court to consider these questions on this appeal, not only because they are closely related to the other questions in this case, but also in accordance with their general supervisory powers over the administration of justice in the Courts of this State.

IV.

Finally defendants have raised a question of the sufficiency of the evidence to sustain their convictions. Since [fol. 49] this is so interrelated with all of the other arguments and questions already certified or which as a result of this petition may be certified for review by this Court, it is urged that this question be certified as well.

Wherefore the defendants pray, for the reasons set forth herein that this Court grant certification of all questions raised on this appeal.

Dated at New Haven, Connecticut, this 31st day of January, 1963.

Respectfully submitted,

Catherine G. Roraback, Attorney for Defendants-Petitioners.

I hereby certify that the foregoing petition presents substantial questions meriting certification, and that it is filed in good faith and not for purposes of delay.

Dated at New Haven, Connecticut, this 31st day of January, 1963.

Catherine G. Roraback, Attorney for Defendants-Petitioners.

Certificate of Service (omitted in printing).

IN THE SUPREME COURT OF ERRORS
OF THE STATE OF CONNECTICUT

Nos. CR6-5653 AP
CR6-5654 AP

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD
AND C. LEE BUXTON

ORDER GRANTING CERTIFICATION—February 19, 1963

The defendants have filed a petition for certification and the court having considered said petition finds that it should be granted.

[fol. 50] Whereupon it is ordered that said petition be and it hereby is granted.

By the Court,

Raymond G. Calnen, Clerk.

Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 52]

IN THE SUPREME COURT OF ERRORS
OF THE STATE OF CONNECTICUT

November Term, 1963

STATE OF CONNECTICUT

v.

ESTELLE T. GRISWOLD

STATE OF CONNECTICUT

v.

C. LEE BUXTON

Informations charging the defendants with the crime of assisting and abetting the use of drugs, medicinal articles and instruments for the purpose of preventing conception, brought to the Circuit Court in the sixth circuit and tried to the court, Lacey, *J.*; judgment of guilty in each case which, on appeal, the Appellate Division of the Circuit Court affirmed; from its judgment the defendants, on the granting of certification, appealed to this court. No error.

Catherine G. Roraback, for the appellants (defendants).

Julius Maretz, prosecuting attorney, and Joseph B. Clark, assistant prosecuting attorney, for the appellee (state).

OPINION

COMLEY, *J.* After a trial to the court in the Circuit Court for the sixth circuit at New Haven, the defendants were found guilty as accessories to certain violations of General Statutes § 53-32, which appears with the statute on accessories in the footnote.[1] The principal offenders were not

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[1] "Sec. 53-32. *Use of Drugs or Instruments to Prevent Conception.* Any person who uses any drug, medicinal article or instru-

[fol. 53] prosecuted. The convictions of the accessories were sustained by the Appellate Division of the Circuit Court, which, at the same time, certified that there were substantial questions of law which should be reviewed by this court. These questions, together with others certified by us, are now before us on this appeal.

There is no significant dispute about the facts. In November, 1961, The Planned Parenthood League of Connecticut occupied offices at 79 Trumbull Street in New Haven. For ten days during that month the league operated a planned parenthood center in the same building. The defendant Estelle T. Griswold is the salaried executive director of the league and served as acting director of the center. The other defendant, C. Lee Buxton, a physician, who has specialized in the fields of gynecology and obstetrics, was the medical director of the center. The purpose of the center was to provide information, instruction and medical advice to married persons concerning various means of preventing conception. In addition, patients were furnished with various contraceptive devices, drugs or materials. A fee, measured by ability to pay, was collected from the patient. At the trial, three married women from New Haven testified that they had visited the center, had received advice, instruction and certain contraceptive devices and materials from either or both of the defendants and had used these devices and materials in subsequent marital relations with their husbands. Upon these facts, there is no doubt that, within the meaning of § 54-196 of the General Statutes, the defendants did aid, abet and counsel married women in the commission of an offense under § 53-32.

Section 53-32, enacted in 1879 (Public Acts 1879, c. 78), has been under attack in this court on four different occasions in the past twenty-four years. *State* v. *Nelson*, 126 Conn. 412, 11 A.2d 856; *Tileston* v. *Ullman*, 129 Conn. 84,

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ment for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

"Sec. 54-196. *Accessories.* Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

26 A.2d 582; *Buxton* v. *Ullman*, 147 Conn. 48, 156 A.2d 508; *Trubek* v. *Ullman*, 147 Conn. 633, 165 A.2d 158. An examination of these cases discloses that every attack now made on the statute, standing by itself or when considered in combination with § 54-196, has been made and rejected in one or more of these cases, the last two having been decided within the past five years. The defendants virtually concede this fact in the closing paragraph of their brief where they urge this court "to consider whether or not in the light of the facts of this case, the current developments in medical, social and religious thought in this area, and the present conditions of American and Connecticut life, modification of the prior opinions of this Court might not 'serve justice better.'" A-427 Rec. & Briefs 616. In rejecting this claim we adhere to the principle that courts may not interfere with the exercise by a state of the police power to conserve the public safety and welfare, including health and morals, if the law has a real and substantial relation to the accomplishment of those objects. The legislature is primarily the judge of the regulations required to that end, and its police statutes may be declared unconstitutional only when they are arbitrary or unreasonable attempts to exercise its authority in the public interest. See *State* v. *Nelson*, supra, 422, and cases cited in *Buxton* v. *Ullman*, supra, 59. Furthermore, as pointed out in *Buxton* v. *Ullman*, supra, 56-59, the General Assembly has not recognized that the interest of the general public calls for the repeal or modification of the statute as heretofore construed by us. It is our conclusion that the conviction of the defendants was not an invasion of their constitutional rights.

The rulings on evidence and on the motion to correct the finding, of which the defendants complain, do not merit discussion.

There is no error.

In this opinion the other judges concurred.

[fol. 54]

IN THE SUPREME COURT OF ERRORS
OF THE STATE OF CONNECTICUT

At a Supreme Court of Errors held at Hartford on the first Tuesdays of November AD 1963.

Present, Hon. John H. King, Chief Justice, Hon. James E. Murphy, Hon. William J. Shea, Hon. Howard W. Alcorn, Hon. John M. Comley, Associate Judges.

STATE OF CONNECTICUT

vs.

ESTELLE T. GRISWOLD, of New Haven, Connecticut

and

C. LEE BUXTON, of New Haven, Connecticut

On Appeal from the Judgment of the Appellate Division of the Circuit Court.

JUDGMENT—April 28, 1964

This appeal by the defendants claiming error in the process, record and judgment, and in the proceedings and decisions of the Circuit Court, 6th District on questions of law arising in the trial, as may appear in the certified transcript of record and findings of facts, on file in this Court, was allowed by the Circuit Court, 6th District, in New Haven County, on January 12, 1962 and came to the Appellate Division of the Circuit Court on October 9, 1962 when the parties appeared and were fully heard by said Appellate Division of the Circuit Court and thence to January 7, 1963 when said Appellate Division of the Circuit Court found No Error in the decision of the Circuit Court, 6th District, thence to January 31, 1963 when the defendants filed a Petition for certification by the Supreme Court of Errors and a statement of the case, thence to February 19, 1963 when said Petition was granted and said case came to this Court at its term held at Hartford, on the first Tuesday in February, A. D. 1963, and thence by continuance to the

present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Appellate Division of the Circuit Court there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established and that the appellee recover of the appellants its costs taxed at $.....

Date of judgment, April 28, 1964.

By the Court,

Edward Horwitz, Clerk.

[fol. 55] Clerk's certificate to foregoing papers (omitted in printing).

[fol. 56]

IN THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

No. 5485

STATE OF CONNECTICUT, Appellee

vs.

ESTELLE T. GRISWOLD, Appellant

STATE OF CONNECTICUT, Appellee

vs.

C. LEE BUXTON, Appellant

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 22, 1964

I. Notice is hereby given that Estelle T. Griswold and C. Lee Buxton, appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Errors of Connecticut, dated

and entered on April 28, 1964, affirming a judgment of the Circuit Court, Appellate Division which had affirmed a judgment of conviction of the Circuit Court, Sixth Circuit, against appellant.

This appeal is taken pursuant to 28 U. S. C. Section 1257(2).

II. The clerk will please prepare a transcript of so much of the record as was used in this case by the Supreme Court of Errors for transmission to the clerk of the Supreme Court of the United States, including all pleadings, orders, judgments and opinions therein.

III. The following questions are presented by this appeal:

Whether Section 54-196 (the criminal accessory statute) and Section 53-32 (making it a criminal offense to use "any drug, medicinal article or instrument for the purpose of preventing conception"), General Statutes of Connecticut, 1958 Revision, are unconstitutional on their face or as applied to these appellants in this case, in that they deprive appellants of liberty and property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States, that they deprive them of [fol. 57] freedom of speech contrary to the First and Fourteenth Amendments and that they invade the privacy and liberty of the women who testified that they received contraceptive advice and materials from these appellants, contrary to the Fourth, Ninth and Fourteenth Amendments to the Constitution of the United States.

Fowler V. Harper, Attorney for Appellants, 127 Wall Street, New Haven, Connecticut.

[fol. 58] Proof of Service (omitted in printing).

Clerk's certificate to foregoing paper (omitted in printing).

[fol. 59]

SUPREME COURT OF THE UNITED STATES

No. 496—October Term, 1964

ESTELLE T. GRISWOLD, *et al.*, Appellants,

v.

CONNECTICUT.

ORDER NOTING PROBABLE JURISDICTION—December 7, 1964

Appeal from the Supreme Court of Errors of the State of Conecticut.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.